

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 (OAKLAND DIVISION)

4 In re:

5 PICONGEN WIRELESS, INC., Case No. 12-48131
6 Chapter 7
7 Oakland, California
8 January 22, 2013
10:03 a.m.
Debtor.

9 _____/

10 TRANSCRIPT OF PROCEEDINGS
11 TRUSTEE'S MOTION TO SELL PROPERTY FREE AND CLEAR;
12 OPPOSITION FILED BY ROBERT GROOVER, III

13 BEFORE THE HONORABLE ROGER L. EFREMSKY
14 UNITED STATES BANKRUPTCY JUDGE

15 APPEARANCES:

16 For the Debtor: VECTIS LAW GROUP
17 BY: PATRICK M. COSTELLO, ESQ.
18 2225 E. Bayshore Blvd. Suite 200
Palo Alto, California 94303

19 Chapter 7 Trustee: PAUL MANSDORF, ESQ.
20 1563 Solano Avenue #703
Berkeley, California 94707

21 For the Trustee: PINNACLE LAW GROUP
22 BY: JEREMY W. KATZ, ESQ.
23 425 California Street, Suite 1800
San Francisco, California 94104

1 APPEARANCES (CONTINUED):

2
3 For the Equity Holders: BARLOW, GARSEK & SIMON, LLP
4 ROBERT A. SIMON, ESQ.
5 3815 Lisbon Street
6 Fort Worth, Texas 76107

7
8 For the Sigma Group: KORNFIELD, NYBERG, BENDES & KUHNER
9 BY: ERIC A. NYBERG, ESQ.
10 2970 Broadway, Suite 225
11 Oakland, California 94612

12
13 In pro se: ROBERT O. GROOVER, III, ESQ.
14 14801 Quorum Drive, Suite 500
15 Dallas, Texas 75254

10

11 Equity Holder: DAVID E. BARTLETT, ESQ.

12

13 Court Recorder: ERIN WALTERS
14 United States Bankruptcy Court
15 1300 Clay Street
16 Oakland, California 94612

15

17 Transcription Service: Jo McCall
18 Electronic Court
19 Recording/Transcribing
20 2868 E. Clifton Court
21 Gilbert, AZ 85295
22 Telephone: (480) 361-3790

20

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24

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I N D E X

Creditors' Witnesses: Direct Cross

Bigala, Mahesh

By Mr. Nyberg 13

By Mr. Simon 17

Manapragada, Sai

By Mr. Simon 33

Bt Mr. Nyberg 41

P R O C E E D I N G S

January 22, 2013

10:03 a.m.

-oOo-

THE CLERK: All rise. This is the United States Bankruptcy Court, Northern District of California, with The Honorable Roger L. Efremsky presiding.

THE COURT: Please be seated.

THE CLERK: Calling Bankruptcy Case No. 12-48131, Picongen Wireless, Inc. The parties can state their appearance for the record.

MR. KATZ: Good morning, Your Honor, Jeremy Katz for the Trustee who is also present.

THE COURT: Good morning.

MR. COSTELLO: Good morning, Your Honor, Patrick Costello, Vectis Law Group, for this hearing as special counsel for the Debtor, Picongen Wireless, for purposes of filing the Motion to Convert to Chapter 11. With me here in court is Mr. Robert Simon of the Dallas firm of Barlow, Garsek & Simon, who will be representing the Debtor's equity security holders.

MR. SIMON: Robert Simon, Your Honor, for the Debtor's equity security holders.

THE COURT: And who are the Debtor's equity security holders?

MR. SIMON: They are, Your Honor, Sai Manapragada,

1 Ronald Moeckel, Sharat Kumar Yempati, Ankit Sahu, and Max
2 Lightfoot.

3 THE COURT: Okay.

4 MR. SIMON: And also the --

5 THE COURT: Are those the total equity --

6 MR. SIMON: -- Averett Family Trust, Your
7 Honor --

8 THE COURT: Okay.

9 MR. SIMON: -- whom I don't actually specifically
10 represent, but they are here themselves.

11 THE COURT: Are there any other equity holders?

12 (Voices from the audience): Yes, David Bartlett and
13 Dale Kluesing.

14 MR. BARTLETT: David Bartlett.

15 THE COURT: Okay. Are you representing -- are
16 they part of the group?

17 MR. SIMON: Your Honor, I don't specifically
18 represent them, but Mr. Bartlett is here, and --

19 THE COURT: Okay. Well which -- have you
20 consulted with all the equity holders?

21 MR. SIMON: Yes, Your Honor.

22 THE COURT: Well, if you've consulted with them,
23 are they on board with this?

24 MR. SIMON: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. SIMON: Every one of them.

2 THE COURT: All right.

3 MR. NYBERG: Good morning, Your Honor, Eric Nyberg
4 on behalf of Sigma Group, Inc., one of the prospective
5 bidders and Mahesh Bigala from Sigma Group, Inc. is also
6 present in court.

7 THE COURT: All right.

8 MR. GROOVER: Good morning. Robert Groover, pro
9 se.

10 THE COURT: All right. Good morning, sir. Mr.
11 Katz?

12 MR. KATZ: Thank you. Let me start by giving the
13 Court an update of what happened since we were here just a
14 day shy of two weeks ago. On the 9th, we had a hearing, and
15 the Court will recall that it was a motion to sell free and
16 clear. At the end of the hearing, the Court overruled the
17 objection of the objecting party, Mr. Groover, and
18 authorized the sale free and clear, and we continued the
19 hearing to today to hold an auction to see who the winning
20 bidder would be. And an order to the effect of overruling
21 the objection and approving the sale free and clear was
22 entered on January 16th.

23 Since the January 9th hearing, one of the things
24 that the Trustee had asked in court and subsequently in an
25 e-mail to Mr. Costello requested that XStream provide the

1 Trustee with proof of ability to perform, and asked how
2 much money XStream had spent in maintaining the patents.
3 None of those figures have been provided as of this moment.
4 In addition, the Debtor has filed a motion to convert the
5 case to a Chapter 11.

6 Mr. Costello today and in the moving papers,
7 apparently as special counsel for the Debtor, has asked the
8 Trustee to either cancel or postpone today's auction
9 pending a hearing on the motion to convert, which is
10 scheduled right now for February 13th. Sigma Group has
11 informed the Trustee that it wants to proceed with the
12 auction. The Trustee has informed the parties that the
13 Trustee is going to ask the Court and intends to proceed
14 with the auction today if that's permitted, and last but
15 certainly not least, I've been informed that subsequent to
16 the hearing on the 9th, and prior to today, XStream Wireless
17 has contacted the principal or the CEO of the proposed
18 buyer, Mr. Bigala, who's in court, asking him why they
19 wanted to purchase the assets, that the assets were not
20 worth anything; they couldn't do anything with them; and I
21 will leave it at that. If the Court has any questions.

22 THE COURT: All right. I just want to recap the
23 facts for this involuntary, as I understand them. Mr.
24 Costello, representing Mr. Sai Manapragada, wrote a letter
25 on June 19th, 2012 to Messrs. Kluesing and Bartlett,

1 basically saying, we're out of money. If we're going to
2 get any new cash into Picongen Wireless, Inc. to develop
3 our technology, you're going to have to dilute your
4 interest in the company, to which -- and the letter goes
5 into specific detail that the company has no funds to
6 execute on a business Plan and owes substantial accrued and
7 unpaid compensation to Messrs. Kluesing and Manapragada.
8 The company is indebted to Ronald Moeckel under a note and
9 notes in the principal amount of at least 150,000, and
10 these notes are now past due and Mr. Moeckel has made
11 demand for payment. And the company is also further
12 seriously delinquent on its tax obligations to the State or
13 Delaware, and the company has no apparent ability to
14 satisfy any of these liabilities, much less execute on a
15 business Plan.

16 There were two alternatives proposed in the
17 letter to Mr. Kluesing and Mr. Bartlett:

18 "One, you agree to terms of new equity funding,
19 notwithstanding that such terms may significantly
20 dilute your current equity position or the
21 company files for Chapter 7 relief before the
22 value of its intangible property dissipates
23 entirely."

24 Mr. Kluesing as the chief executive officer of Picongen on
25 June 30th, 2012 wrote back to Mr. Manapragada and said:

1 "The stockholders of the company holding a
2 majority of the outstanding shares of the company
3 determined that it was their fiduciary
4 responsibility to take certain corporate actions
5 to protect the best interests of the company and
6 all of the company stockholders, not merely one
7 or two, and to provide the company the
8 opportunity to capitalize on its technological
9 developments for the benefit of the company's
10 constituents."

11 Then on October 3rd, 2012, Mr. Costello, a member
12 of the Vectis Law Group, now purports to represent Ronald
13 Moeckel, a creditor of Picongen, Ankit Sahu, a creditor of
14 the corporation, Max Lightfoot, a creditor of the
15 corporation, and Mr. Manapragada. The involuntary was
16 filed. There was no opposition and the case stay went in
17 as a Chapter 7.

18 Then there was a motion to sell the subject --
19 virtually all of the assets of the company. I won't go
20 into the details. They're set forth in the motion that was
21 originally set for January 9th, came on for hearing, and
22 then continued to this date. At the initial hearing, there
23 was an overbidder who came in who sought to purchase the
24 property, and I'm referring to Mr. Nyberg's client, Sigma
25 Group's bid. Then two days later, there was a motion to

1 convert the case, again filed by Mr. Costello representing
2 the Vectis Law Group, now purporting to represent Picongen
3 Wireless, Inc. Mr. Costello, you seem to be wearing a lot
4 of hats here.

5 MR. COSTELLO: Your Honor, my initial client was
6 Mr. Manapragada.

7 THE COURT: Individually.

8 MR. COSTELLO: Individually. And what happened in
9 the interim between the hearing is that there was a
10 significant change in circumstance. Mr. Moeckel elected to
11 convert his note to shares as he was entitled to do, which
12 changed --

13 THE COURT: And when did he do this?

14 MR. COSTELLO: It would have been subsequent to
15 the initial hearing.

16 THE COURT: Okay. Some time after the 9th.

17 MR. COSTELLO: Some time after the 9th. He
18 determined to convert to equity, which gave Mr. Manapragada
19 and Mr. Moeckel and their closely associated shareholders a
20 controlling interest in the company. They now control a
21 majority of the equity, and with that change in equity,
22 there was also a change in approach to the bankruptcy case.
23 And given the timing, the new equity and new management
24 requested that I file the motion on behalf of the Debtor on
25 an emergency basis, and I've done that as special counsel

1 for the limited purposes of filing the motion.

2 THE COURT: Well, the point is, you're
3 acknowledging that you initially were representing Mr. --

4 MR. COSTELLO: Manapragada, yes.

5 THE COURT: -- Manapragada, individually, then
6 represented the four individuals, putting the corporation
7 into an involuntary and now purport to be representing
8 Picongen Wireless, Inc. on the motion to convert the case
9 from 7 to Chapter 11. I guess the question is, when did
10 the corporation Board of Directors meet to authorize this,
11 because I had the hearing on the 9th. This motion was filed
12 I believe on the 16th, if I'm not mistaken, Mr. Katz?

13 MR. KATZ: The motion to convert?

14 THE COURT: The motion to convert.

15 MR. KATZ: I think it was the 17th.

16 THE COURT: The 17th?

17 MR. KATZ: No, I'm sorry, it was Friday, the 18th.

18 THE COURT: Friday, so the motion was filed nine
19 days later, so my question is, when did the Board of
20 Directors meet to authorize this?

21 MR. COSTELLO: Your Honor, it was done by
22 unanimous consent, which is consistent with the
23 corporation's Articles of Incorporation and bylaws, and it
24 was effective and signed on the 17th.

25 THE COURT: Okay. All right. Mr. Nyberg, do you

1 have anything you wish to add?

2 MR. NYBERG: Obviously my client would like to
3 proceed with the attempt to purchase the assets. We've
4 acted in good faith. We're not a party to all the
5 shenanigans that have been going on in this case. I can
6 represent to the Court and make an offer of proof that Mr.
7 Bigala would, you know, testify that he was contacted by
8 Mr. Manapragada and basically told, you know, that these
9 assets are worthless. If you get them, you'll never get
10 anything.

11 THE COURT: I tell you what I'd like to do; I'd
12 like to have your client come forward. We'll have him
13 sworn in and I'll allow you to elicit some testimony from
14 him --

15 MR. NYBERG: Okay.

16 THE COURT: -- on that point. Ms. Narcisse, if
17 you could swear the gentleman in.

18 MAHESH BIGALA, CEO OF SIGMA GROUP, SWORN

19 THE CLERK: Please remain seated -- standing, I'm
20 sorry. Please remain standing and raise your right hand.
21 Do you solemnly swear or affirm that the testimony you are
22 about to give in the matter now pending before this Court
23 will be the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Thank you. You may be seated. Please
2 state and spell your full name for the record.

3 THE WITNESS: Mahesh Bigala.

4 THE CLERK: Spell it.

5 THE WITNESS: M-a-h-e-s-h, last name Bigala,
6 B-i-g-a-l-a.

7 DIRECT EXAMINATION

8 BY MR. NYBERG:

9 Q Mr. Bigala, by whom are you employed?

10 A With the Sigma Group.

11 Q And what is your capacity with Sigma Group?

12 A I'm the CEO.

13 Q Okay. And you were here for the initial hearing on
14 the Trustee's motion to sell the assets in this case?

15 A Yes.

16 Q And that I believe was on --

17 A Ninth of January.

18 Q -- January 9th; is that correct?

19 A Yes.

20 Q Subsequent to January 9th, did you have any contact
21 with anyone from XStream Wireless?

22 A Yes.

23 Q And who contacted you?

24 A One of their friends, Sai -- I'm sorry -- it's

25 Naidu -- there's a common friend -- they contacted my

1 common friend. They wanted to have a conference call. I
2 just went and opened the thing for a conference call, but
3 they were saying, but, you know, there is nothing; all
4 these patents are expired. You can't do anything with the
5 patents. What you are going to get if you buy is the two
6 T.V.'s, which is -- you might get better T.V.'s for \$2,000
7 in the market. And all those technologies with us, you're
8 going to lose it -- the new company you acquire you're not
9 going to get anything out of it.

10 Q You said there was a conference call?

11 A Yes.

12 Q And who was on the conference call?

13 A Sai Manapragada and Naidu who is their office friend
14 and colleague. And my friend, Srini Kottu and also there
15 is one more gentleman. I don't remember his name, but, you
16 know, from XStream; there was one more gentleman actually.

17 Q And who initiated the contact for this conference
18 call?

19 A Naidu initiated -- contacted my friend, Srini, to
20 have a conversation.

21 Q Sigma Group did not reach out to XStream. It was
22 XStream through your friend reached out to you to set this
23 up.

24 A That's right. Yeah.

25 Q And do you recall what date that conference call took

1 place?

2 A Maybe 14th or 15th.

3 Q Okay. And again, you were told that the patents and
4 the intellectual property would not be worth anything if
5 you purchased it?

6 A Yes.

7 Q Okay.

8 MR. NYBERG: I don't have anything further, unless
9 Your Honor has --

10 THE COURT: Mr. Costello? What I'm going to do is
11 I'm going to take a five-minute break and then Mr.
12 Costello, if you want to ask any questions of the
13 gentleman, you may proceed.

14 MR. COSTELLO: Your Honor, I may defer to Mr.
15 Simon, if that's all right?

16 THE COURT: All right. We're going to take a
17 five-minute recess.

18 MR. COSTELLO: Thank you.

19 (Whereupon, a recess is taken at 10:10 a.m., and the
20 court is reconvened at 10:26 a.m.)

21 THE COURT: All right. Please be seated.

22 MR. KATZ: Your Honor?

23 THE COURT: Yes.

24 MR. KATZ: Before we begin, we would like to know
25 if Mr. Simon is permitted to practice in the State of

1 California?

2 THE COURT: I was going to ask that question.

3 MR. KATZ: I'm sorry.

4 THE COURT: All right.

5 MR. SIMON: I'm not, Your Honor.

6 THE COURT: All right. Have you moved to be
7 admitted on a pro hac vice basis?

8 MR. SIMON: Not yet, Your Honor.

9 THE COURT: All right. Mr. Katz, I'm going to
10 allow him for purposes of today to ask some questions of
11 the gentleman with the understanding that you're going to
12 move this afternoon to file the papers. Okay? All right.
13 Go ahead.

14 And before you start, Mr. Simon, I just want
15 to -- sir, you stated this conversation took place on what
16 date again?

17 THE WITNESS: Probably on the 14th or 15th of
18 January.

19 THE COURT: Of January. And again, on the line
20 was Mr. Manapragada, yourself --

21 THE WITNESS: My friend Srini Kottu.

22 THE COURT: How do you spell his last name?

23 THE WITNESS: K-o-t-t-u.

24 THE COURT: K-o-t-t-u.

25 THE WITNESS: And another friend, Naidu,

1 N-a-i-d-u. I don't know his full name, but his last name
2 is Naidu.

3 THE COURT: Okay.

4 THE WITNESS: And one more gentleman from XStream.

5 THE COURT: And then there was a fifth person?

6 THE WITNESS: Yes.

7 THE COURT: And they initiated the call?

8 THE WITNESS: Naidu contacted my friend, Srini so
9 he initiated the call because he had the conference call
10 ready.

11 THE COURT: Okay.

12 THE WITNESS: And he accepted the call.

13 THE COURT: All right. Go ahead, Mr. Simon.

14 MR. SIMON: Okay.

15 CROSS-EXAMINATION

16 BY MR. SIMON:

17 Q Good morning, Mr. Bigala.

18 A Good morning.

19 Q How are you? My name is Robert Simon. It's good
20 to see you this morning.

21 A Thank you.

22 Q Mr. Bigala, now the conversation that you say occurred
23 on January the 15th, that wasn't your first conversation
24 with Mr. Manapragada and with other people from XStream
25 Wireless; was it?

1 A No.

2 Q In fact, you had had a previous conversation on -- at
3 least there's e-mail correspondence back to at least
4 January the 3rd, correct?

5 A Yes.

6 Q Okay. And on January the 5th, there was a conference
7 call, correct?

8 A I don't know the date, but, yes, there was a
9 conference call.

10 Q Okay. And you were a participant on that call,
11 correct?

12 A Yes.

13 Q Okay. And there was someone else named Srini Kottu?

14 A Yes.

15 Q Okay. And would you tell the Court who Srinivas Kottu
16 is.

17 A He is my friend, and also he is my technical advisor.

18 Q Okay. So he's someone associated with your business.

19 A Not associated directly, but he advises me on the
20 technology.

21 Q Okay. So you were talking to the people at XStream
22 Wireless about this technology back to at least January the
23 5th, correct?

24 A Yes.

25 Q Okay. And in one of those conversations, you said

1 that you were a potential investor or represented potential
2 investors in XStream Wireless, correct?

3 A Basically the way it -- we were in the process of
4 acquiring Picongen during the end of the year, and when my
5 friend -- I asked my friend who is also a technology person
6 about the technology, he said he will contact two people
7 whom he knows. And then when he contacted several of his
8 colleagues, and I think one of them happened to be Naidu,
9 and he proposed that, you know, we have the similar
10 technology, why don't you leave it to us first and do
11 something -- if it works for you, it's better you can join
12 us. That's when he initiated the call. Then when I asked,
13 they talked like they had the product ready and they're in
14 the launching; they were in that stage, but when I had a
15 call, they're saying it's not the stage. We are getting
16 the product from the Court. I said what is the company
17 name? They said Picongen. Okay. That's why we are
18 looking -- we are already working on it. So there's no
19 point in working--

20 Q Someone said to the XStream Wireless people, we think
21 we might want to invest 2.5 million dollars for ten percent
22 of the equity, correct?

23 A If the products that are needed to be produced, they
24 said several contracts have been signed with the companies
25 in India, and several -- not for the ten percent, only they

1 offer 2.5 million. I said it's subject to the due
2 diligence and if they have -- they said they have a
3 contract with several companies in India, and the product
4 is ready to be launched, and they need the money to
5 manufacture the product. But in the call, they said it's
6 nothing like that. They denied to my friend that they need
7 2.5 million. It's not that we have not agreed; we said
8 just discuss the proposal.

9 Q Okay. So but someone said let's discuss this
10 proposal, the 2.5 million dollar investment in XStream.

11 A In XStream.

12 Q Right.

13 A But not knowing any details of the Picongen.

14 Q Right. And whoever that was would have acquired
15 equity in XStream in exchange for that 2.5 million,
16 correct?

17 A It's subject to due diligence.

18 Q Yes, subject to due diligence, yes.

19 A No, not necessarily because it's what -- it could be
20 \$100,000; it could be 10,000. Unless we do the due
21 diligence, my company could be worth a hundred million, I
22 could say. Can you invest 25 million in my company, but
23 unless I see -- I go through the documents, I have no
24 firsthand information of XStream at all, except the call.

25 Q But the number 2.5 million dollars was mentioned in

1 the call, correct?

2 A Yes.

3 Q Okay. And the 2.5 million, subject to due diligence,
4 would be in exchange for --

5 A It's basically -- it's not mentioned what they need.
6 They are looking for 2.5 million investment.

7 Q Okay.

8 A It's not that we want to invest 2.5 million.

9 Q Okay.

10 Q But you said -- you said, I represent people who may
11 be willing to make an investment like this subject to due
12 diligence.

13 A Yes. I'm going to be the product if I like it.

14 Q Okay. And in the context of that call, someone
15 offered to send -- XStream offered to send a business plan
16 with information, correct?

17 A Yes.

18 Q Okay.

19 MR. SIMON: Your Honor, I have only one copy. May
20 I ask the witness if he recognizes the document?

21 THE COURT: Mr. Katz, Mr. Nyberg, do you want to
22 take an opportunity to look at the document first?

23 MR. SIMON: I'm sorry, Your Honor. I didn't know
24 I'd be cross-examining the witness or I would have brought
25 more copies.

1 THE COURT: Mr. Nyberg and Mr. Katz, if you want
2 an opportunity, I'll have Ms. Narcisse make some copies and
3 you can take an opportunity to review the same.

4 MR. NYBERG: Well, I think maybe there should be a
5 little foundation first of all as to whether or not this
6 document was actually sent to Sigma --

7 THE COURT: Well, I understand. I'm just simply
8 saying if you wanted it ahead of time, all right? We'll
9 let Mr. Katz finish.

10 MR. KATZ: We'll see what he has to say.

11 THE COURT: All right. Mr. Simon, if you can lay
12 a foundation with regards to whether this gentleman has
13 ever seen the document, let alone whether it was sent.

14 MR. SIMON: Sure. Sure. May I approach him, Your
15 Honor?

16 THE COURT: You may.

17 MR. SIMON: Thank you.

18 THE COURT: All right. Let the record reflect
19 that Mr. Simon has handed a copy of the alleged business
20 plan to the witness.

21 BY MR. SIMON:

22 Q Okay. Mr. Bigala, would you take a look at the
23 document in front of you, please? Take as long as you
24 need.

25 A Yes.

1 Q Okay. Do you recognize that?

2 A Yes, in the e-mail, yes.

3 Q Okay. So that document was e-mailed to you, correct?

4 A Yes.

5 Q Okay. And that document contains information about
6 the technology that XStream is trying to develop, correct?

7 A I assume so because I have not gone through the whole
8 technology or the document at all.

9 Q Okay. But you understand that's the same technology
10 that Picongen was trying to develop, correct?

11 A I don't know.

12 Q You don't know. Okay. Now, when -- in exchange for
13 what you received -- I should say -- maybe I should ask --
14 in the back of that packet, I believe there is a draft of a
15 non-disclosure and confidentiality agreement. Do you see
16 that?

17 A I don't see that. Actually, as I said, I didn't even
18 read through the document. But the e-mail, after the call,
19 the e-mail was sent later on.

20 Q Okay.

21 A That was the initial call, and during the call -- If
22 he sent the information, I would have gone through the
23 thing or whatever it is, but basically, even -- when you're
24 saying -- that's what I'm looking at actually.

25 Q Okay. So but you've seen that document; it was e-

1 mailed to you.

2 A He sent the e-mail, and I might have it in the e-mail;
3 I can see if it's there or not; I can look at it in the e-
4 mail as well.

5 Q Okay. But the e-mail had an attachment, and that was
6 part of the attachment to the document, to the e-mail,
7 right?

8 A I don't recall. I don't remember, that's what I'm
9 saying. I'd have to check my e-mail --

10 Q You have to check your e-mail, okay.

11 A -- to see if it's there or not.

12 Q Okay. Would that have been on January the 5th?

13 A As I said, it could be, but I don't really remember
14 the exact date. It could be 5th, that week, I don't know.

15 Q Okay. But the first week of January after an e-mail
16 exchange, you had a conference call, correct?

17 A Yes.

18 Q All right. And after the conference call, a further
19 e-mail was sent to you.

20 A Yes.

21 Q And the further e-mail had an attachment.

22 A Yes.

23 Q And the further attachment -- it looks like this
24 document, the business plan for XStream Wireless?

25 A I think so, yeah.

1 Q Okay. Now if you look at the back of that, you'll see
2 there is a non-disclosure and confidentiality agreement.

3 Do you see that?

4 A M-hm.

5 Q Okay. Was that non-disclosure and confidentiality
6 agreement ever signed and returned?

7 A I was never asked. I was never told about any non-
8 disclosure. All this is after the call. I was not
9 interested when they said actually they are in the process.
10 It's not -- when I asked about the business plan, I asked
11 them, do you have the client agreement already? Why do you
12 need the money? Send me why do you need the money, the
13 proposal. And they said, oh, we don't have any contract
14 signed. We are in the product development -- I said at
15 that stage, I'm not interested in any of that. And then he
16 said, I will share the document with you. If you are
17 interested, you can come back to me. That's how the call
18 ended. He said, why we need the funds; he said he was
19 going to send over the details, but he never sent any
20 details of why he needed the funds, but he sent the
21 document. After that, I have no idea after that.

22 Q Okay. Did someone else, your technical advisor or
23 someone else associated with your business read this
24 attachment?

25 A I don't think so. I don't know. I didn't even ask

1 him.

2 Q You don't know. Okay, you don't know.

3 A I don't know.

4 Q Okay. But the non-disclosure and confidentiality
5 agreement was never signed as far as you know?

6 A I never read it. I don't even know that it was there
7 also. I was not even told that there is a non-disclosure
8 that will be there as part of our call or anything to do
9 with that. First of all, I was not sure; it's basically we
10 were trying to acquire Picongen, then the gentleman denied
11 actually that. It's an opportunity which is already
12 existing in a similar technology of what you're looking
13 for. Why don't you have a call. Then that's when we said
14 yes, we will talk.

15 Q Does the technology appear to be the same, as best as
16 you can tell?

17 A What is that?

18 Q The technology that you talked about with XStream, is
19 that the same technology that Picongen is trying to
20 develop?

21 A It looked to be similar.

22 Q Okay. And after receiving this, this attachment, and
23 after the telephone conversations that you had had with
24 XStream, then you decided to go ahead and make a bid for
25 the assets of Picongen?

1 A Not after receiving it, before that only.

2 Q Before, you had decided maybe you would like to make
3 a bid?

4 A I had decided to make a bid on that. I was looking
5 for a California attorney, and meanwhile I was learning
6 more about the technology, what can be done. That's how I
7 contacted several people who are in the wireless
8 technologies. That's my friend who is into wireless
9 technology. He contacted several other people, about what
10 can be done with this technology, and we entered the
11 process of acquiring this.

12 Q Okay. And among the people that they contacted, was
13 XStream?

14 A One of them I think -- not XStream actually. He
15 contacted one of his associates, his counterpart in his
16 company, and he happened to be associated with XStream.

17 Q Okay.

18 A He has not contacted XStream. He has contacted all
19 his colleagues in his company where he works, and one of
20 the persons, Naidu, he said, okay, why are you buying
21 something else, related to some other company? They are
22 far away and they have the better technology. But when he
23 set up the call, it happened to be the same company they
24 were talking about.

25 Q The same company. All right.

1 MR. SIMON: Your Honor, if I may have a moment. I
2 may be done, but I want to talk to Mr. Costello and briefly
3 to my clients, because I'm fairly new to this.

4 THE COURT: Please go ahead, Mr. Simon.

5 (Pause.)

6 BY MR. SIMON:

7 Q Mr. Bigala, did the contacts start as early as
8 December the 28th, that is, on December the 28th, 2012, did
9 Mr. Srinivas Kottu contact Naidu about XStream Wireless?

10 A I don't know when he contacted him, but that's when I
11 contacted Srinivas was to find out we are in the process of
12 acquiring this; just can you give me some input on the
13 technology.

14 Q Okay.

15 A It's actually he has contacted several other people
16 also, just not only Naidu and his colleagues. He has
17 contacted several other people, because he works in the
18 wireless technology, so he contacted several other people
19 actually.

20 Q Okay. So, now, who is Naidu? Would you clarify one
21 more time who Naidu is?

22 A I don't know; he's Srinivas' friend.

23 Q Okay.

24 A And I think he works for some other company, but, you
25 know, they are their clients or something, and he talked to

1 them about the product, that this is what we are looking,
2 and then he introduced to XStream saying that there is an
3 investment opportunity. Why are you acquiring it in the
4 court rather like, there is already a product available
5 which is -- I mean the contracts sent out. Why don't you
6 have a conference call.

7 Q Okay. And the conference call took place on January
8 3rd, and you were part of that conference call, correct?

9 A Yes. And to object to one thing, Your Honor, I just
10 found one e-mail, and the confidentiality to what they're
11 talking about, just like go through browsing the e-mail,
12 this was not included, actually, just I'm going through
13 this -- they were included later on.

14 THE COURT: The non disclosure agreement was not
15 included -- not part of your e-mail.

16 THE WITNESS: Not included, and I think they
17 included it now.

18 THE COURT: All right. Thank you.

19 BY MR. SIMON:

20 Q Okay. Was the non-disclosure agreement sent to you
21 separately on January the 3rd?

22 A No.

23 MR. NYBERG: Your Honor, if I may just interject,
24 I'm not sure what the relevance of --

25 THE COURT: I'm just about -- I've given Mr. Simon

1 quite a bit of latitude. Go ahead.

2 MR. SIMON: You have, Your Honor, which I
3 appreciate.

4 THE COURT: Mr. Simon, just a second.

5 MR. NYBERG: Because the witness has already
6 testified he didn't sign an NDA, so unless Mr. Simon wants
7 to produce a signed NDA, I think this is irrelevant.

8 THE COURT: Mr. Simon, do you have a signed NDA?

9 MR. SIMON: No, Your Honor, and that was the
10 point. This information -- at least it's my client's
11 position; it's a little difficult to cross-examine looking
12 at e-mails on tablets -- but that the information was sent
13 on the condition that an NDA would be signed.

14 THE COURT: All right. Well, Mr. Simon, the issue
15 I have before me today is whether Mr. Manapragada,
16 individually, and/or XStream contacted this gentleman
17 and/or his company to dissuade them from buying or
18 affecting their price. That's what I'm most concerned
19 about. I can see where this is going with respect to
20 XStream, and this gentleman, if he's successful in
21 acquiring the subject property here today. I'm more
22 concerned about what was stated to this gentleman about
23 anything that might affect his willingness to bid or the
24 amount he was willing to bid. That's what's germane today.

25 MR. SIMON: All right. And, Your Honor, I don't

1 claim to know.

2 THE COURT: All right. Well then I think we've
3 covered enough here. If you want to call Mr. Manapragada
4 to the stand to either admit what he stated on the record
5 in this conference call or to deny it, that's fine.

6 MR. SIMON: Your Honor, there actually is a
7 relevant question. There are a couple of relevant
8 questions, if I may, that directly relate to that issue.

9 THE COURT: With regards to what?

10 MR. SIMON: To the issue of whether the bidding is
11 affected in any way.

12 THE COURT: My question is, I want to know -- I
13 want to confirm whether Mr. Manapragada contacted this
14 gentleman in that conference call that this gentleman has
15 referenced and basically said, don't bid on it; you're
16 wasting your time and your money; it's not worth it.
17 That's what I want to know. That's what's germane.

18 MR. SIMON: Okay.

19 THE COURT: Whether it has any effect on this
20 gentleman or not, that's a whole other issue. What I want
21 to know is, Mr. Manapragada contacted this gentleman in
22 this conference call and attempted to persuade him either
23 not to bid or to affect his bid to keep it down or lower
24 than what somebody else might bid.

25 MR. SIMON: Your Honor, this is the first time

1 I've heard about this. Before I would ever call Mr.
2 Manapragada, I would want to talk to him, Your Honor.

3 THE COURT: All right. Do you want an opportunity
4 to talk to him?

5 MR. SIMON: Absolutely.

6 THE COURT: All right. All right, sir, you can
7 step down. We'll take a ten-minute recess until 11:00
8 o'clock.

9 MR. SIMON: Thank you.

10 (Whereupon a recess is taken ag 10:47 a.m., and the
11 court is reconvened at 11:02 a.m.)

12 THE CLERK: Please come to order. Court is back
13 in session.

14 THE COURT: Please be seated. All right, Mr.
15 Simon.

16 MR. SIMON: Yes, Your Honor. The equity holders
17 call Sai Manapragada.

18 THE COURT: All right. If you could come forward,
19 sir.

20 SAI MANAPRAGADA, EQUITY HOLDERS' WITNESS, SWORN

21 THE CLERK: Please remain standing while I swear
22 you in. Please raise your right hand. Do you solemnly
23 swear or affirm that the testimony you are about to give in
24 the matter now pending before this Court will be the truth,
25 the whole truth, and nothing but the truth, so help you

1 God?

2 THE WITNESS: Yes.

3 THE CLERK: Thank you. You may be seated. Please
4 state and spell your full name for the record.

5 THE WITNESS: Sai Manapragada, S-a-i is the first
6 name, and last name is Manapragada, M-a-n-a-p-r-a-g-a-d-a.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. SIMON:

10 Q Good morning, Mr. Manapragada. Are you one of the
11 equity holders of the Debtor, Picongen?

12 A Yes.

13 Q Okay. And are you also a principal of XStream
14 Wireless?

15 A Yes.

16 Q Okay. Mr. Manapragada, did you have a telephone
17 conversation that included Mr. Bigala on January the 15th?

18 A Yes.

19 Q All right. Would you tell the Court how that
20 telephone conversation came about, not what happened, but
21 how the conversation came about?

22 A When I talked to Suba Garlapati, who's the contact who
23 got me in touch with Naidu, who's the common friend of
24 Srini Kottu, who is the friend of Mahesh Bigala, Naidu said
25 this is not kosher. We had given him -- him in the sense

1 Mahesh Bigala -- we have shared confidential information
2 and he said that he wants to confront him and he did so in
3 an e-mail, and there is a transcript of the e-mail. If you
4 want me to, I can read that.

5 Q Okay. And I want to make sure we're clear on all
6 these pronouns. Who wanted to confront whom?

7 A Naidu wanted to confront Srini Kottu and Mahesh.

8 Q Okay. Mr. Bigala?

9 A Mr. Bigala.

10 Q And why did Naidu want to confront Mr. -- what is your
11 understanding of why Naidu wanted to confront Mr. Bigala
12 and Mr. Srini Kottu?

13 A I think he felt that he was being taken advantage of
14 by getting him to give information under the assumption
15 that he would -- Mr. Bigala and Mr. Kottu would use the
16 information in a confidential manner and since he did not
17 do it, I think he sent an e-mail to Srini saying that I
18 would like to talk to you about XStream and Mahesh.

19 Q Okay. And did --

20 MR. NYBERG: Your Honor, I would move to strike
21 whatever comment about what the e-mail contained. First of
22 all, there's no evidence of the e-mail. Second, the e-mail
23 would be the best evidence of its contents, so I would move
24 to strike his testimony as to what was contained in the e-
25 mail.

1 MR. KATZ: And it's hearsay.

2 THE COURT: Yeah, Mr. Simon, I'm going to sustain
3 the objections. What I would like to know --

4 MR. SIMON: We'll get there, Your Honor.

5 THE COURT: Okay, but what I'd like to get there
6 now -- we can go into the other aspects you want to
7 develop, but I want to know what this gentleman said to the
8 other prospective buyer on or about the 14th or 14th of
9 January, 2013. That's what I'm focusing on, so let's stick
10 to that.

11 MR. SIMON: Absolutely, Your Honor. That's the
12 next questions.

13 BY MR. SIMON:

14 Q Did a telephone conversation take place on January the
15 15th?

16 A Yes.

17 Q And who was on the telephone conversation?

18 A Mr. Bigala, Mr. Kottu, Mr. Naidu, Mr. Garlapati and
19 myself.

20 Q Okay. And in that telephone conversation, did you in
21 any way try to dissuade the Sigma Group or Mr. Bigala from
22 bidding on the assets of Picongen?

23 A No, I did not.

24 Q Okay. All right. What did you say in that telephone
25 conversation?

1 A For the most part, I was quiet. Naidu wanted me to
2 come on the phone and there was talk about whether -- I
3 mean that I am interested to work if this -- to develop
4 this technology, after the meeting happens, and when I
5 asked about what he actually means, Suba, one of the
6 persons on the conference call, said that he thought that
7 Mahesh wanted to offer me a job after he acquires the
8 assets, at which point, I was under clear instructions that
9 that phone call, I'm not supposed to be making any deals.
10 I told him very clearly that I am there only because Naidu
11 asked me, and Mahesh Bigala said okay, you guys can do
12 whatever you want. We'll do whatever we want, and at which
13 point, I said, okay, this conversation is over. The last
14 thing that Suba said was this is unethical, and then Mahesh
15 Bigala and he started having an argument, at which point, I
16 hung up the phone.

17 Q Okay. What did Mr. Bigala say, as best you recall,
18 before you hung up?

19 A He was saying that when Suba alleged about his being
20 unethical, and he said, well, what XStream is doing is also
21 unethical and how can Picongen's assets be acquired by
22 XStream? So that is unethical, and at which point, I
23 didn't want to have that conversation because -- the reason
24 I hung up is because there's no basis for him to know what
25 happened with the founders and the interested parties and

1 the creditors of the company, and I didn't want to be part
2 of that conversation anymore.

3 Q Did you understand that you were not allowed to
4 attempt to dissuade Mr. Bigala or Sigma Group from bidding?

5 A Yes, sir.

6 Q And did you understand you were not allowed to try to
7 lower the bid price by giving incorrect information to Mr.
8 Bigala or to Sigma?

9 A Yes. I'm aware of that, and I have not done anything
10 to dissuade or said anything to dissuade him from going on
11 with the auction.

12 Q Okay. Did anyone in the conversation say that these
13 assets aren't very valuable?

14 A There was an e-mail sent by Naidu, which I was
15 referring to, and I have a copy of that e-mail. Everybody
16 was -- all five people were copied on that e-mail, and it
17 said -- I think I ought to read it, as it is, if it's okay.

18 THE COURT: Go ahead, please read it.

19 MR. SIMON: I have a copy.

20 THE WITNESS: We don't have it here.

21 MR. SIMON: Your Honor, I have a copy. I'm happy
22 to let the witness take a look at it.

23 THE COURT: All right. Mr. Katz, Mr. Nyberg, do
24 you want to take a look at it first?

25 (Pause.)

1 MR. SIMON: May I approach the witness, Your
2 Honor?

3 THE COURT: All right. We ought to mark this. Do
4 we have a copy of this document? Let me do this. Mr.
5 Simon, what I want -- if you could get the document from
6 the gentleman up there which is the business plan, we'll
7 make a copy of that. With regards to the business plan,
8 I'm going to have that marked as -- I'm just going to
9 reference it as --

10 MR. SIMON: Equity Holders' Exhibit 1.

11 THE COURT: That's fine, and then the e-mail
12 you're referring to we mark as Equity Exhibit No. 2.

13 MR. SIMON: Very well, Your Honor.

14 THE COURT: And as a housekeeping purpose, we'll
15 make copies at the end, so go ahead.

16 MR. SIMON: Okay. Your Honor, may I approach the
17 witness?

18 THE COURT: You may. Let the record reflect Mr.
19 Simon is approaching the witness with the subject e-mail.

20 THE WITNESS: Reading the e-mail --

21 BY MR. SIMON:

22 Q Would you start by reading to the Court the date, who
23 the e-mail is to, and who the e-mail is from, and the re:
24 line and then the subject of the e-mail, the text.

25 A The e-mail is from Naidu Annamaneni, and it was sent

1 on Monday, January 14th, 2013 at 6:04 p.m. to Srini Kottu.
2 Subject: XStream Wireless and Mahesh.

3 "Srini: Do you have a minute to talk about
4 XStream Wireless and Mahesh? It looks like
5 Mahesh is trying to do some back-door stuff of
6 getting the assets of Picongen based on the
7 information we shared. Without Sai's involvement
8 in the product development on getting the
9 patents, it is going to be useless assets in case
10 if he is thinking of benefitting from it. It
11 would be nice if we can talk ASAP. Regards,
12 Naidu."

13 With a confidentiality notice on it.

14 Q Okay. Is that the e-mail that prompted the telephone
15 conversation on January the 15th?

16 A Yes.

17 Q Okay. And that e-mail is not from you; is it?

18 A It is not from me.

19 Q Okay. And at any time during the telephone
20 conversation on January the 15th, did you tell Mr. Bigala
21 that the assets aren't worth anything or that the assets
22 are not valuable?

23 A No, I did not.

24 Q Okay. And did you attempt to dissuade him from
25 bidding?

1 A No, sir.

2 Q Okay.

3 MR. SIMON: Pass the witness, Your Honor.

4 THE COURT: All right. Who is Mr. Naidu?

5 THE WITNESS: Mr. Naidu is a common friend. He is
6 known to me by another close friend of mine, Suba
7 Garlapati, who has been helping me and our company,
8 Picongen Wireless, as a business development vice
9 president, and he has been instrumental in opening doors
10 for the VC's and angel investors (phonetic) since 2007, and
11 Naidu Annamaneni has been introduced to validate the
12 technology a few years ago -- I don't recall -- maybe it's
13 2008. At that time, from that moment onwards, Naidu
14 Annamaneni has been on the board of advisors, technical
15 advisors, for Picongen Wireless, and when Naidu contacted
16 Suba to have a technical due diligence meeting with XStream
17 Wireless --

18 THE COURT: Who is Suba?

19 THE WITNESS: Suba is the person I just told you,
20 the vice president of business development that has been
21 helping me from 2007.

22 THE COURT: Okay.

23 THE WITNESS: And --

24 THE COURT: Now, Suba -- is that the same -- Mr.
25 Naidu and Suba are two different people?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay.

3 THE WITNESS: Suba is the vice president of
4 business development. Naidu Annamaneni is another person.
5 He's the member of the board of technical advisors for
6 Picongen and also for XStream, and he was approached by
7 Srini, according to one of these e-mails, asking about
8 XStream and saying that there is an investment offer, and
9 he was doing the technical due diligence. That's how I
10 came to know about this meeting.

11 THE COURT: And who is Srini?

12 THE WITNESS: Srini is a friend of Naidu, and as
13 far as I know, he is -- Naidu works in a company called E-
14 silicon (phonetic). His customer, one of the other
15 companies I don't know which one, Srini is an employee of
16 that customer company of E-silicon. That's how we met.

17 THE COURT: And then Kottu?

18 THE WITNESS: Srini Kottu is his full name.

19 THE COURT: That's a full name. Okay. All right.
20 Mr. Katz, Mr. Nyberg, do you have any questions?

21 MR. NYBERG: Just one clarifying thing.

22 CROSS-EXAMINATION

23 BY MR. NYBERG:

24 Q Good morning.

25 A Good morning.

1 Q I just want to make sure I was clear on something.
2 You indicated that -- and let's see if I got the names
3 correct, but Naidu is both a technical advisor, board of
4 technical advisors for Picongen; is that correct?

5 A Correct.

6 Q And I believe you also said he's a technical advisor
7 for XStream as well; is that correct?

8 A We don't have a technical board of advisors for
9 XStream set up yet, but he is -- he is in one of the
10 references of the company.

11 Q Okay. So he's assisting XStream at least.

12 A Yes.

13 Q Okay.

14 THE COURT: And when was XStream -- do you know
15 when XStream was incorporated?

16 THE WITNESS: I think roughly the date for
17 application is in the last week of October, first week of
18 November.

19 THE COURT: October of last year.

20 THE WITNESS: October of 2012.

21 THE COURT: Okay. And the purpose of XStream
22 being formed?

23 THE WITNESS: XStream Wireless is -- once the --
24 we wanted to develop the technology, the wireless
25 technology that I was working on.

1 THE COURT: At Picongen?

2 THE WITNESS: To Picongen, yes.

3 THE COURT: Okay. All right. So the purpose was
4 to basically pick up the technology from Picongen and
5 develop it at XStream Wireless.

6 THE WITNESS: Since the bankruptcy was filed, it
7 was disclosed at the bankruptcy that XStream Wireless is a
8 group that is formed to acquire the assets of Picongen.

9 THE COURT: Okay. And how much money went into
10 the capitalization of XStream Wireless when it was formed
11 in October or November of 2012?

12 THE WITNESS: A hundred thousand dollars.

13 THE COURT: Okay. Has any additional funds come
14 into the company since?

15 THE WITNESS: No, sir.

16 THE COURT: All right. How many employees does
17 XStream Wireless have?

18 THE WITNESS: Currently, one.

19 THE COURT: And who is that?

20 THE WITNESS: That is me.

21 THE COURT: All right. Anything else?

22 MR. SIMON: Your Honor, there's actually quite a
23 bit depending upon what exactly the Court wants to hear.

24 THE COURT: I want to just find out -- hear both
25 sides of the story as to the conversation that took place

1 on or about the 14th or 15th of January. That's what I was
2 concerned about. So I have no further questions for Mr.
3 Manapragada at this juncture.

4 MR. SIMON: That was my understanding, Your Honor.
5 That was the issue we were talking about, not the broader
6 issue of, you know, should the sale go forward; should the
7 case be converted to 11.

8 THE COURT: Well, on the motion to convert, that's
9 not coming up until February and there's opposition that's
10 been filed already, so all I have before me today is the
11 sale.

12 MR. SIMON: Okay.

13 THE COURT: Okay. All right. Mr. Katz, let me
14 hear from you.

15 MR. KATZ: Thank you.

16 MR. SIMON: Will we get the opportunity to argue,
17 Your Honor?

18 THE COURT: Absolutely. I just want to start with
19 Mr. Katz and hear from Mr. Nyberg and then hear from you,
20 sir.

21 MR. KATZ: I think it's helpful to go back through
22 the history that the Court began discussing.

23 MR. SIMON: Your Honor, if the witness is going to
24 testify --

25 THE COURT: Mr. Manapragada, you may step down. I

1 apologize. Thank you, sir.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: And then do I have -- you can leave
4 those two exhibits there and we're going to make copies of
5 those. Thank you.

6 MR. KATZ: An involuntary petition was filed
7 against Picongen on October 3rd. The petitioning creditors
8 were represented by Mr. Costello. In fact, Picongen
9 stipulated for an order -- to an order for relief in the
10 involuntary, so an order for relief was entered on October
11 26th.

12 Mr. Mansdorf was appointed trustee shortly
13 thereafter, and -- I mean within -- Mr. Mansdorf is here;
14 he can correct me if I'm wrong -- I mean within a day or
15 two, my understanding is. Mr. Costello now purporting to
16 represent XStream Wireless contacted the trustee and told
17 him about the bankruptcy -- the patents, some of which had
18 expired, some of which were in jeopardy of expiring if they
19 were not renewed quickly and that XStream wanted to make an
20 offer to purchase the assets with a very short closing
21 date, and as a matter of fact, the initial closing date
22 proposed by XStream was November 30th. And in order for the
23 estate to do some due diligence, because don't forget,
24 there were not any schedules or statement of affairs filed
25 yet, the estate didn't know what was going on.

1 So the estate was between a rock and a hard
2 place, you know, there's no money to protect the assets
3 which are in jeopardy of being lost and whatever value they
4 had would be lost, but there's also we are told persons, or
5 at least one person -- it turned out to be three entities
6 that had secured interests against potentially these
7 assets, so you don't know what they are; you don't know --
8 we didn't know what they were or if they were legitimate.

9 So eventually, a deal was struck where the assets
10 would be sold on proper notice and a motion to sell free
11 and clear had to be filed. In the meantime, I was having
12 conversations with Mr. Groover about his alleged lien. But
13 I want to point out that this was presented to the estate
14 by XStream, by Mr. Costello, you got to do this now or
15 you're going to lose everything. Then of course we were
16 here on the 9th of January and the objections to the sale
17 free and clear were overruled and the sale was confirmed,
18 subject to an overbid today.

19 So then on the -- and as I mentioned, you know,
20 at the hearing on the 9th and in an e-mail subsequently, I
21 asked for information from XStream to provide the estate
22 with proof of ability to perform anything over a \$60,000
23 bid as well as ascertaining how much they had spent in
24 renewing or extending these patents. We already know from
25 Mr. Groover that he spent about \$2,000 to maintain one of

1 the English patents, so what XStream has done, I have no
2 idea -- if anything.

3 Then the Friday, last Friday, or perhaps the day
4 before, approximately 5:30 p.m. on Thursday the 17th, I get
5 an e-mail from Mr. Costello purportedly on behalf of the
6 Debtor, saying there's been a change in circumstances. The
7 Debtor wants to file a motion to convert to a Chapter 11.
8 All the shareholders have sung "Kumbaya" and we want to put
9 a plan together, and we want the trustee to cancel or at
10 least continue the auction pending our -- the Debtor's
11 motion to convert. In the morning, I contacted Mr. Nyberg
12 with the information that there was this issue. Mr. Nyberg
13 told me he would call his client and let me know if the
14 client still wanted to go forward with the auction, and the
15 answer to that was yes.

16 I sent an e-mail to Mr. Groover asking what his
17 position was, and Mr. Groover sent me an e-mail saying he
18 wanted the auction to be continued pending the motion to
19 convert. At around 11:30 Friday morning, the 18th, the
20 Debtor did file its motion, the perfunctory motion to
21 convert, this time being represented by Mr. Costello as
22 purported special counsel. So in this scenario, we have,
23 as the Court noted, we have Mr. Costello representing Mr.
24 Manapragada, several of the people either related to or
25 associated with the Debtor, Picongen, then representing the

1 alleged bidder, then representing the alleged Debtor --
2 well, not the alleged Debtor, the Debtor.

3 And now we find out that between the 9th when the
4 sale was authorized subject to the auction today, that the
5 creditors that were there until at least the 9th, all of a
6 sudden had become shareholders, and there's no debt and
7 they want a Chapter 11 case which to me makes -- well, is
8 interesting because what the -- right now, the bid of
9 \$85,000 from Sigma, I mean, I would think that a Chapter 11
10 alone would be more than that if they have to go through
11 the whole Plan process, but maybe it won't because now
12 everybody is on board allegedly.

13 What I do want to say -- I mean I've never seen
14 anything like this in my 25 years of doing bankruptcy work,
15 the facts of what's gone on in the last two weeks. I mean
16 this was basically orchestrated -- the bankruptcy was
17 basically orchestrated by Mr. Manapragada, and the sale was
18 orchestrated by Mr. Manapragada, and when an unanticipated
19 bidder came in and it appears that Mr. Manapragada would
20 have to spend more money than he wanted to, to get the
21 assets, all of a sudden everything changes to what appears
22 to me to be an effort to chill a sale, they bring -- he, or
23 his proxy brings a motion to convert.

24 One thing -- well, another thing I will say is,
25 Mr. Manapragada and XStream have caused the estate to incur

1 a significant amount of money up to this point. They filed
2 the involuntary; they contacted the trustee and told him
3 this sale had to take place immediately or be lost. Then
4 we do a motion. Mr. Groover requires a lot of work on
5 behalf of the estate to address his lien issue, and now on
6 the -- literally the eve of the auction, we've had to
7 respond to a motion to convert. And when I say expenses, I
8 mean my firm alone as of yesterday was in the \$25,000
9 range.

10 The trustee believes that under the
11 circumstances, the auction should go forward. The Debtor
12 can have a hearing on its motion on the 13th of February,
13 and at this point, unless the Court has questions, I don't
14 know if the trustee would like to make a statement.

15 THE COURT: Mr. Mansdorf?

16 MR. MANSDORF: Thank you, Your Honor. Just a few
17 more points. The timing of the formation of XStream is a
18 little suspect, I would add, but again, this is an
19 involuntary. The Debtor agreed, stipulated for relief.
20 The parties were looking for what appears to be a quick
21 sale on the cheap as I think the evidence shows already.
22 Suddenly when it was going to cost more, they have some
23 kind of revelation. Clearly, there's some value here.
24 Look at the Texas contingent that has come out to appear at
25 what might not even be an auction, and we have a bidder

1 from New Jersey who is out here. Is this the second trip
2 out here? He's made two trips out here. He shouldn't have
3 to come out here again.

4 I don't know what a Chapter 11 is really going to
5 reorganize here. If there truly aren't any creditors
6 anymore, why would this company want to be in Chapter 11.
7 Further, it would seem that the parties who want to buy
8 this and reorganize would be better off buying the assets
9 clean from a Chapter 7 estate and start all fresh without
10 any of the burdens of what might have gone wrong with
11 Picongen. And the cost of a Chapter 11, as Mr. Katz
12 stated, would seem to be more than the assets might be
13 worth, especially -- they invited us to file claims in a
14 Chapter 11, which is probably not going to do us any good.
15 We've spent an awful lot of time and effort on this,
16 encouraged by the Debtor.

17 Finally, there was an allusion to possible tax
18 creditors earlier in this hearing, right at the beginning,
19 and I don't recall the exact content.

20 THE COURT: State of Delaware, and it was in a
21 letter that Mr. Costello wrote which I make reference to
22 which is Mr. Costello's letter of June 19th, 2012
23 specifically in the section -- page 1 of the letter, the
24 financial condition and prospects of the company, it says:

25 "The company is further also seriously delinquent

1 on its tax obligations to the State of Delaware."
2 It's also my recollection the State of Delaware is listed
3 as a creditor in the bankruptcy.

4 MR. MANSDORF: We're also dealing with Debtor-
5 prepared schedules, and while they might be a hundred
6 percent accurate, I don't know that at this time, so I
7 really don't know who the entire creditor pool is in this
8 case, but we have a substantial Chapter 7 administrative
9 expense, and most likely, the estate is liable -- the
10 estate itself is liable for some kind of -- some tax
11 obligation as the estate has been open for some time.

12 THE COURT: All right.

13 MR. KATZ: I have one more fact I left out. No
14 one from the Debtor appeared at the 341.

15 THE COURT: All right. All right, Mr. Costello,
16 do you have anything you wish to add?

17 MR. COSTELLO: I'm going to defer to Mr. Simon.

18 THE COURT: All right.

19 MR. SIMON: Your Honor, may I approach with a copy
20 of the Debtor's schedules?

21 THE COURT: You may. Thank you, sir.

22 MR. SIMON: Good morning again, Your Honor. Your
23 Honor, if you will take a look at the Debtor's schedules,
24 if you look at Schedule D, which I have cleverly --

25 THE COURT: D as in David?

1 MR. SIMON: Yes, Your Honor, which I've marked
2 with a post-it note. It's page 8 of 16 in the schedules.
3 You'll see the list of secured creditors, and there is Mr.
4 Groover and Mr. Kluesing and the Averett Family Trust.
5 Your Honor, I'm not here telling you they are secured
6 creditors. They may be unsecured creditors, but they're
7 creditors. Whether they're secured or unsecured, they're
8 creditors of that estate -- to this estate, and they're all
9 here today, and they're all supporting postponing the
10 auction and converting the Debtor's case to Chapter 11, and
11 if the Court will turn to Schedule F, here are the rest of
12 the creditors, and most of these people are now interest
13 holders. Mr. Moeckel, who's a creditor for \$225,000 has
14 converted his note to equity. He's an equity holder. Mr.
15 Ankit Sahu is also an equity holder, and Mr. Lightfoot is
16 an equity holder, and Mr. Bartlett is also now an equity
17 holder.

18 Mr. Manapragada has a claim in some amount. It's
19 listed as disputed. There's some argument about the amount
20 of the claim, but it's a claim. It's a claim for purposes
21 of 101.5, and Mr. Kluesing also has a claim. Now, no
22 objections to these claims have been filed. The point is,
23 Your Honor, and we'll get to it, there are no outside
24 creditors. This Debtor doesn't owe anybody any money
25 except its own shareholders, and the shareholders are all

1 here too, either directly here or here through
2 representatives, and they're all saying the same thing,
3 which is, don't sell this asset; it has substantial value,
4 if given a little opportunity to develop it.

5 THE COURT: So Mr. Simon, let me stop you there
6 and ask you, I've got a letter written by Mr. Costello,
7 June 19th, 2012, and it says:

8 "The company is further also seriously delinquent
9 on tax obligations to the State of Delaware."

10 What was the default or the amount owed to the State of
11 Delaware on June 19th, 2012 when this letter was written?

12 MR. SIMON: I do not know the amount.

13 THE COURT: Mr. Costello, how much was owed?

14 MR. COSTELLO: I don't recall, Your Honor.

15 THE COURT: Give me an approximation.

16 MR. COSTELLO: I really truly do not recall.

17 MR. SIMON: Someone will probably know, Your
18 Honor. I think we can ask.

19 THE COURT: No, that's fine. That just tells me
20 what I need to know.

21 MR. BARTLETT: Excuse me, I can answer that.

22 THE COURT: Mr. Simon, continue. That answers my
23 question.

24 MR. SIMON: Your Honor --

25 THE COURT: Mr. Simon, I'm not interested in an

1 answer now because frankly, I have to say that on this
2 record, this stinks. This is nothing but a manipulation of
3 the bankruptcy process.

4 MR. SIMON: Your Honor, we don't -- Bankruptcy
5 Courts don't run Chapter 11's for the benefit of
6 administrative creditors. They don't run it for the
7 benefit of trustees or for attorneys. They run it for the
8 benefit of the creditors of the estate.

9 THE COURT: Don't tell me what the Court does.
10 I'm talking about the integrity of the process here. The
11 bankruptcy process has been manipulated by Mr. Manapragada.
12 This stinks. On this record alone, without hearing
13 anything else, I could deny the motion to convert on bad
14 faith. I am so disgusted about what I have found out here
15 today and what's gone on behind the scenes. I don't think
16 there's -- I mean I'm willing to listen to you, but I don't
17 think there's anything -- to me this is just a gross
18 manipulation. Mr. Costello wearing multiple hats -- first,
19 he comes in representing Mr. Manapragada individually; next
20 thing I know he's representing the four creditors who filed
21 the involuntary petition; now he comes in representing the
22 Debtor. I find out that XStream gets formed in October or
23 November for the sole purpose of basically coming in and
24 cherry-picking this technology and to run it. It has a
25 hundred thousand dollars; it has one employee. Who's the

1 employee? Mr. Manapragada, who testifies about coming here
2 to -- he learns about it on his own. He says he gets a
3 phone call initiated by XStream or Mr. Manapragada or Mr.
4 Manapragada participates in it, and there's a dispute as to
5 what was said. Whether there should have been any
6 communication at all, I would say the answer to that is a
7 resounding no.

8 So, do you have anything else you wish to add?

9 MR. SIMON: Other, Your Honor, than the fact that
10 all the creditors and all the interest holders in this
11 case, these people were -- they were developing a new
12 technology; they had a falling out, a dispute, as often
13 happens when people are investing; as it turns out,
14 actually, rather large amounts of money, trying to develop
15 technology. After they got into a fight, they went their
16 separate ways and an involuntary petition was filed. They
17 recognize that this asset is worth a great deal more than
18 \$85,000. It takes some time, and it takes a little bit of
19 money, but they're willing to do that. They're willing to
20 commit their time and --

21 THE COURT: Well, wait a minute, Mr. Simon. What
22 happened was is they filed -- put this into an involuntary.
23 There was no opposition. Then they wanted to cherry-pick
24 the assets of the company. Mr. Costello is pushing to
25 close this by November 30th. They didn't want anybody to

1 know about it, and then lo and behold, some outside buyer
2 comes in who's not connected with XStream or with Picongen,
3 who's willing to pay earnest money to acquire it, and
4 they're screaming "foul," and saying, oh Gosh, now I've got
5 all of these purported creditors who are going to convert
6 to equity, which raises the question whether it was really
7 they were creditors in the first place, whether it was
8 really equity contributions. It stinks. It's a
9 manipulation. It's an attempt to manipulate the bankruptcy
10 process.

11 MR. SIMON: Your Honor, I don't think so.

12 THE COURT: It certainly looks like it. I mean it
13 walks like a duck; it quacks like a duck; it seems to fly
14 like a duck; it looks like a duck to me.

15 MR. SIMON: Your Honor, everyone in this process
16 is presumed to act in their own economic self interest, and
17 they were. But I don't think anyone has been dishonest
18 with the Court, and I don't think anyone has been dishonest
19 with the creditors.

20 THE COURT: I don't have -- I don't share that
21 belief.

22 MR. SIMON: And no one is trying to do anything
23 that the Code does not allow. I mean the Code allows
24 debtors in Chapter 7 one opportunity to convert to an 11,
25 and the reason it does that is Congress understood, you

1 will have changes in circumstances, and when you have a
2 change in circumstance or simply the parties perceive their
3 self interest differently, they have the opportunity to
4 convert the case. Now, the Supreme Court has said that's
5 not an absolute right even though the statute says it's an
6 absolute right; the Supreme Court has said well, it's not
7 an absolute right, if you can show that conversion would
8 be -- is sought in bad faith. But in this case, conversion
9 is sought for the purpose of maximizing assets.

10 THE COURT: That's not -- I don't have a
11 conversion motion before me right now. What I have is, is
12 there any reason why this auction shouldn't go forward
13 today.

14 MR. SIMON: Yes, Your Honor, because it's not in
15 the best interest of the estate.

16 THE COURT: And why is that?

17 MR. SIMON: Because the asset is worth a great
18 deal more than \$85,000, if the Debtor is given the
19 opportunity to get the patents issued which will take a
20 little bit of time and a little bit of money.

21 THE COURT: So the representations made by XStream
22 to the trustee that what they originally wanted to bid for,
23 you're basically telling me was total nonsense.

24 MR. SIMON: Your Honor, that was what XStream was
25 willing to bid for it, XStream acting in its own economic

1 self interest, trying to buy the asset as cheaply as it can
2 buy it, like any other bidder in a process.

3 THE COURT: And then when there was an overbidder,
4 a qualified overbidder, came in, they basically said, we
5 don't want to play by these rules anymore.

6 MR. SIMON: They said we think the asset is worth
7 more than -- all of the equity holders collectively, not
8 just XStream, said this asset is worth more than that.
9 We're willing to put up some more of our money and more of
10 our effort to try to develop an asset and develop it to the
11 point where it's worth a lot more money and sell it and pay
12 off the creditors such as they are, although, you know, Mr.
13 Groover is the largest creditor by far, and make a return
14 to the equity holders who put in, as I recall, four million
15 dollars over time to develop this asset. That's what
16 they're trying to recover.

17 MR. COSTELLO: Your Honor, if I can make one
18 point. I think --

19 THE COURT: No, you've deferred to Mr. Simon, Mr.
20 Costello.

21 MR. COSTELLO: Okay. Thank you.

22 THE COURT: All right. Anything else?

23 MR. SIMON: Your Honor, in terms of what a Chapter
24 11 would actually cost, this Debtor doesn't have employees;
25 it doesn't have utilities expenses; it doesn't have

1 mortgage payments. It really doesn't have rent. What it
2 has is a professional who needs to be paid for the purposes
3 of getting these patents issued. And apparently there
4 are -- there are up to \$25,000 in administrative claims
5 that they'll have the opportunity to seek for the
6 administrative claims through filing an application for
7 allowance and payment of administrative claims.

8 If these assets are worth what we think they're
9 worth, there will be ample money to pay administrative
10 claims; there will be ample money to pay Mr. Groover and
11 the rest of the creditors, and make return to the equity
12 holders. If you just sell this asset, at least \$25,000 of
13 the money is going to the lawyers; another \$5,000 is going
14 to go to the trustee; and the creditors and equity holders
15 of this company -- the creditors will not be paid and the
16 equity holders will get nothing, despite all the effort,
17 all the time, and all the money that's been invested in
18 this process thus far.

19 Now, I understand, Your Honor, that not everybody
20 has played by Sunday school rules, but nobody has broken
21 the law here, and I don't believe anyone is lying to the
22 Court, and I don't believe anyone has lied.

23 THE COURT: Let's just say, Mr. Simon, you and I
24 would have to disagree upon that, and maybe no one has come
25 out of the box and made a statement that's patently false,

1 but there's also a problem with the failure to fully
2 disclose as to what went on in this process, which I find
3 extremely disturbing.

4 MR. SIMON: Your Honor --

5 THE COURT: You're new to this game, and I
6 appreciate that, and I wanted to hear what you had to say.
7 Anything else?

8 MR. SIMON: No, Your Honor.

9 THE COURT: All right. Thank you. All right, Mr.
10 Nyberg, do you have anything you wish to add?

11 MR. NYBERG: Just very briefly, Your Honor. I
12 learned a long time ago when to shut up. The only thing I
13 would point out, I was surprised when Mr. Simon said how
14 valuable the patents are now. Schedule B, Personal
15 Property, response to Item No. 22, "Patents, Copyrights,
16 and Other Intellectual Property," Picongen System Patents -
17 Value: \$135,000. And if the patents are valuable, what
18 better way to realize the value of IP than through an
19 auction? What are they scared of? I mean if you really
20 want to, you know, monetize intellectual property which is
21 always difficult to value, the best way for a trustee to
22 monetize that is through the auction process, and I think
23 that's what should happen here, and I think the one thing
24 that we still don't -- you know, we don't know is, we've
25 heard how all the creditors now suddenly saying "Kumbaya"

1 and everyone is in agreement, but we still don't know about
2 the State of Delaware. They may not be in agreement. And
3 if this case converts to an 11, what guaranty is there that
4 this Plan will be successful; what guaranty do we have that
5 these patents won't end up with XStream. I just think that
6 given all the circumstances in this case, the fairest thing
7 to everybody involved -- and it's a level playing field for
8 XStream and for my client -- is simply to proceed with the
9 auction and let the market determine the value of the
10 patents and I think that's fair to everybody.

11 THE COURT: Thank you, Mr. Nyberg. Mr. Katz and
12 Mr. Mansdorf, with everything you've heard today, do you
13 still want to go forward with the auction, and one of the
14 thoughts I have is setting a minimum bid of 135,000, which
15 is the amount that was set forth in Question No. 22,
16 Schedule B. Do you want to have a moment to think about
17 that?

18 MR. KATZ: Yes.

19 MR. MANSDORF: Yes, please.

20 THE COURT: All right. We'll take a five-minute
21 recess.

22 (Whereupon, a recess is taken at 11:45 a.m., and the
23 court is reconvened at 12:02 p.m.)

24 THE CLERK: Please come to order. The court is
25 back in session.

1 THE COURT: Please be seated. All right. Mr.
2 Groover, you've been standing up in the courtroom. Why
3 don't you come forward. If you could state your
4 appearance.

5 MR. GROOVER: Thank you, Your Honor. Robert
6 Groover, pro se.

7 THE COURT: Good afternoon, sir.

8 MR. GROOVER: If the Court permits, I'm well aware
9 of the time, and would like to run through some points very
10 quickly.

11 THE COURT: That would be fine, sir. You've come
12 all the way out from Texas for your second trip. I'd be
13 interested in hearing what you have to say, but if you
14 could be brief, I'd appreciate it.

15 MR. GROOVER: Thank you, sir. The first is that I
16 understand that the motion to convert is not before the
17 Court today, but I would point out that if the crucial
18 assets are sold out from under the Debtor, that's going to
19 make nonsense of the motion to convert. So basically a
20 sale today would preempt that, and I would urge the Court
21 not to allow the sale today.

22 Second, I am the largest creditor. It is not
23 correct as was stated that there are no creditors. I
24 support the conversion, and as I stated to trustee's
25 counsel, my request was that the sale should be canceled or

1 alternatively postponed. We have had a lot of activity in
2 this case quite recently, and some surprising facts popped
3 up, and I would suggest that all these surprises are reason
4 for the Court to go slower rather than faster and make sure
5 that all the relevant facts and considerations are before
6 the Court.

7 Second point, the Court previously ruled that
8 there was a bona fide dispute regarding my lien. I would
9 point out that there's -- I would suggest that there is no
10 evidence to support that, and that that ruling should be
11 reconsidered. I have provided some evidence for the
12 existence of my lien. The trustee's counsel has provided
13 no evidence against the existence of this lien.

14 THE COURT: Nor do I have any evidence that there
15 is in fact one, so I'm going to -- the motion to reconsider
16 is denied.

17 MR. GROOVER: Your Honor, may I have leave to put
18 in a written exhibit? There is an e-mail to the trustee --

19 THE COURT: Not at this juncture, because
20 that's -- I've already ruled on that.

21 MR. GROOVER: Yes, Your Honor. The third point
22 is, I would suggest that protection under 363(e) has not
23 been shown. 363(e) specifically says notwithstanding any
24 other provision -- I'm not sure if it's the statute or that
25 section, Your Honor, but I would suggest that I'm entitled

1 to protection under 363(e), and I have not gotten it.

2 Fourth, a very important point here, I'm going to
3 pick up on something that the trustee's attorney said in
4 the previous argument or it may have been a statement by
5 the Court. I was talking about the time frame to get the
6 real value from these patents, and the comment was that
7 that time frame is not compatible with a Chapter 7
8 proceeding where we want to collect the money and wrap
9 things up. I would suggest, Your Honor, that that is an
10 excellent reason why conversion to a Chapter 11 proceeding
11 is entirely appropriate if only on the basis of completing
12 the work on the patents and getting them to the point where
13 there are the large amounts of money which I hope are
14 there.

15 Your Honor, I'm not going to talk about patent
16 technicalities unless the Court wants to hear it. I would
17 comment in general that these patents are damaged
18 properties. The analogy that comes to my mind is, it's a
19 little bit like finding a car that's upside down in a
20 river. I happen to know -- I happen to know since I worked
21 on the car -- that there's a Ferrari engine inside it. So
22 it's far more valuable than might appear. So these damaged
23 properties have a fairly low cash value right now. If I
24 went out and shopped them around, I could not get very much
25 for them right now. I expect, and I am a 33-year patent

1 attorney with a lot of experience in patent licensing and
2 litigation, as well as prosecution, I would expect that I
3 should be able to raise very substantial money from them if
4 I can get six months to a year to work on them and finish,
5 basically repair and finish their prosecution.

6 If the Court has further questions about patent
7 details or if the Court would like a written summary of the
8 patent properties and their prospects, I'll be happy to do
9 that.

10 The next point. 363(m), I would submit that even
11 before today and especially in view of the testimony this
12 Court has heard today, it would be impossible or the Court
13 properly should not make a 363(m) finding in favor of
14 either of the cash bids which are on the table, and I would
15 respectfully object to both of those bids under 363(m).

16 Sixth point. The effect of such a sale would be
17 to destroy the value of my lien. My lien could certainly
18 be paid off in cash if somebody wants to do that, but I
19 would suggest that this action to quickly -- essentially
20 destroys my expectation, destroys my property right when I
21 have not had a notice and opportunity to be heard. If it
22 is a crucial issue to cancel my lien, then I deserve an
23 opportunity to present evidence and briefing in favor of
24 that.

25 Seven, in terms of maximizing the value for the

1 estate, it seems like a fairly easy calculation to me, Your
2 Honor. I would hope that these patent portfolios could
3 eventually realize three million dollars or more. I would
4 target at least a million dollars, but it's going to take
5 six to twelve months. Six months would be a very fast
6 schedule. Twelve is more likely. I do have a network of
7 patent brokering and patent monetization contacts. I've
8 got my strategy in mind. I would prefer not to name names,
9 but I can assure the Court that I've played this game and I
10 know what my first four phone calls are going to be.

11 Eight, if the Court is going to rule against us
12 and conduct an auction sale today, then I would request an
13 emergency stay of any such confirmation, and

14 Nine, a very important point, this has become a
15 rather heated proceeding. The trustee is now arguing
16 against the first cash bidder, but I would point out that
17 this is a complete change of position. In my objections to
18 the sale, I was making many of the points which the trustee
19 is now making and I would suggest that this reversal is yet
20 another reason to show that this is a complex picture.
21 There are multiple stake holders, and the Court should
22 consider moving more carefully as opposed to faster.

23 Thank you, Your Honor. Any questions?

24 THE COURT: All right. Thank you. No, sir, thank
25 you very much. All right, Mr. Katz?

1 MR. KATZ: Most of the points that Mr. Groover
2 raises were raised at the last hearing and decided by the
3 Court when it overruled the objections and issued the order
4 authorizing sale free and clear of Mr. Groover's and/or his
5 firm's alleged lien. So I don't need to go over them
6 again. As far as 363(e) protection, his lien, to the
7 extent he has one, attaches to the proceeds of sale to the
8 same extent and the same validity of priority as they
9 attached, if they ever did, to the assets being sold.

10 Well, as to a good faith finding, we'll deal with
11 that when we find out what happens today, but I would
12 submit based on this record and what has transpired, there
13 is clearly a basis to make a good faith finding so we can
14 put this sale to bed. In anticipation of his request for a
15 stay, there's no basis to issue a stay. If Mr. Groover
16 really thought these assets were so valuable, and I can
17 tell you from conversations I had with him in the past, he
18 didn't think that at all. There's plenty of investors who
19 will come up with money, you know, in the three months
20 since he first contacted me.

21 The other interesting thing that Mr. Groover says
22 is, you know, with the disclosures that came out in court
23 today, it's more reason for the Court to postpone the sale.
24 Well, the interesting thing is, at the last hearing, Mr.
25 Groover was alleging that the petitioning creditors -- he

1 was alleging hanky-panky. But now he appears to be on
2 their side. So I'm not quite sure what if anything has
3 gone on there. I mean now he's supporting the petitioning
4 creditors who he was alleging two weeks ago of hanky-panky.

5 Unless the Court has any other questions --

6 MR. MANSDORF: But does Mr. Groover have standing
7 anymore if the minimum bid is more than his alleged lien?

8 THE COURT: What I said at the last hearing, I
9 overruled his objections to the auction, but specifically
10 allowed him to bid here today, subject to the trustee's
11 approval that he's a qualified bidder. So he can have that
12 opportunity to bid on his own or to assist somebody else in
13 bidding and basically assume that there might be three
14 potential bidders here today, the original stalking horse
15 bidder, that of Sigma, and then Mr. Groover if he wanted to
16 bid today. So what we have -- what I've based -- I've
17 heard everything here today, reviewing all of the papers, I
18 guess the question I have for you, Mr. Mansdorf, do you
19 wish to proceed with the auction, and that in your belief,
20 that this is in the proper exercise of the trustee's
21 business judgment? Is there anything that leads you to
22 believe that it would be more appropriate to continue the
23 sale for purposes of exposing it to the market further, or
24 do you wish to proceed with the auction here today?

25 MR. MANSDORF: I wish to proceed with the auction

1 here today.

2 THE COURT: All right. Okay. All right, based on
3 that, no one has put forth any evidence, other than a
4 willingness to delay the auction for purposes of first
5 considering the motion to convert the case to Chapter 11.
6 For the reasons previously stated on the record by the
7 Court, I have serious concerns with that motion, but what's
8 before me today is whether there's any basis to delay or
9 cancel the auction and I've heard nothing on this record
10 that would make me -- lead me to believe that. Even Mr.
11 Groover, who's come again from Texas has indicated that the
12 as-is value of these patents is nowhere near what he thinks
13 it might be worth in six to twelve months. Mr. Manapragada
14 and others, Mr. Simon, have said there's basically no
15 business to reorganize here. All we have are the patents.
16 We have an auction to dispose of the subject patents, and
17 as Mr. Nyberg said, what better way to maximize the value
18 of the estate than having an auction.

19 No one has objected, or to the extent they have
20 and it hasn't already been overruled, that this was
21 properly marketed, we have an overbidder who's come in with
22 an initial bid to purchase the assets of the business,
23 carving out any tort claims and the collection of the two
24 notes against Mr. Manapragada for the sum of \$85,000, and
25 that is the prevailing bid. Now, is there anybody else

1 that wishes to bid?

2 MR. KATZ: Can I ask the Court -- you suggested
3 \$135,000.

4 THE COURT: Well, that was the initial bid --

5 MR. KATZ: I'm sorry?

6 THE COURT: What's the status of that?

7 MR. KATZ: Well, we believe that that's an
8 appropriate number. A couple things that the trustee would
9 suggest is, at that number, the bidder should have the
10 opportunity to buy everything that the initial sale motion
11 contemplated, so not just the patents and the intellectual
12 property, but any inventory and equipment and all notes and
13 rights to payment available by Mr. Manapragada, that the
14 assets would not include cash on hand, accounts receivable,
15 or notes, other than Mr. Manapragada's tax refunds and
16 avoidance actions.

17 THE COURT: All right. So basically what the
18 initial offer from -- I'll refer it to the XStream group,
19 is on the table, but the minimum bid is 131,000. Mr.
20 Nyberg, is your client willing to make that bid?

21 MR. KATZ: 135,000.

22 MR. NYBERG: 135.

23 THE COURT: I have 135, which is out from Schedule
24 B, which is the -- I'm taking that was the amount of the
25 Picongen system patents, which is the number there, which

1 is almost twice as much as the original stalking horse bid.

2 MR. NYBERG: Sigma Group would be prepared to bid
3 \$135,000 for all of the assets we've just discussed,
4 including the notes, business tort claims, everything
5 except the excluded assets that Mr. Katz just announced.

6 THE COURT: Basically it's the original offer that
7 was --

8 MR. NYBERG: Yes.

9 THE COURT: Okay. Does any party in the courtroom
10 wish to overbid? Mr. Groover?

11 MR. GROOVER: Your Honor, I would just like to
12 note that my original offer is still of record, and that I
13 am asserting that both of the cash offers should be
14 disqualified.

15 THE COURT: And your offer is?

16 MR. GROOVER: Ten thousand dollars cash now,
17 \$25,000 cash at the end of 2013 plus my claim, plus both of
18 the other secured claims. That is a larger face value
19 amount though less total cash.

20 THE COURT: So it's 10,000 cash now, 25,000 in a
21 year?

22 MR. GROOVER: Yes.

23 THE COURT: Waiver of your claim?

24 MR. GROOVER: Yes, and of the Averett Family Trust
25 claim and of Mr. Kluesing's claim.

1 THE COURT: And the Averett claim is how much?

2 MR. GROOVER: Thirty-one thousand, I believe.

3 THE COURT: And the Kluesing claim is?

4 MR. GROOVER: That is twenty-five hundred.

5 THE COURT: Okay. And your claim is roughly again
6 how much?

7 MR. GROOVER: Hundred and six thousand, Your
8 Honor. The Debtor listed it as 103,000. I have submitted
9 invoices and a spreadsheet showing computation of the
10 interest at California prejudgment --

11 MR. SIMON: There's a Proof of Claim on file, Your
12 Honor.

13 THE COURT: All right. So I have roughly -- it's
14 a waiver of 139,500 in claims, an initial cash of 10,000,
15 and possibly 25,000 in a year from now versus an all-cash
16 offer of 135,000 now. All right. Does anybody else wish
17 to bid?

18 MR. COSTELLO: Your Honor, just one minute.

19 Your Honor, we'll go to 136 on the same terms as
20 our original offer.

21 THE COURT: And my recollection, Mr. Katz, the
22 bidding is to go up in increments of a thousand?

23 MR. KATZ: Correct.

24 THE COURT: All right. All right, so I have an
25 overbid from -- I'll refer to -- Mr. Costello is the

1 XStream Group?

2 MR. COSTELLO: XStream Wireless works, Your Honor.

3 THE COURT: Okay, very good. So I have 136. Let
4 me ask you this, from the trustee's perspective, what is
5 the trustee's position on Mr. Groover's offer for 10,000
6 now, 25,000 in a year, and a waiver of \$139,500?

7 MR. MANSFORD: My business judgment rejects that
8 offer and doesn't -- it's not on an equivalent standing
9 with cash to the estate, now.

10 THE COURT: Okay. Mr. Groover, did I fairly
11 identify what you just offered?

12 MR. GROOVER: Your Honor, one slight correction, I
13 said just now on the record 25,000 at the end of 2013.

14 THE COURT: Okay.

15 MR. GROOVER: That's still not cash today, but
16 it's less than a year.

17 THE COURT: All right. Thank you. So the trustee
18 has rejected that, and we have now an overbidder from the
19 Wireless Group of 136,000?

20 MR. COSTELLO: Your Honor, and to be clear, there
21 is additional consideration. The notes by the investors
22 and Mr. Moeckel have been converted, but the claims of Mr.
23 Manapragada for his compensation have not been subject to
24 conversion, and those are also being waived as part of the
25 consideration.

1 THE COURT: All right. That's the amount of
2 \$1,104,000 that's disputed?

3 MR. COSTELLO: I'm sorry, Your Honor?

4 THE COURT: It's listed -- I haven't seen the
5 claim, but I've got the amount listed as disputed at
6 1,104,000.

7 MR. COSTELLO: Correct. Correct.

8 THE COURT: Okay. Mr. Nyberg?

9 MR. NYBERG: Sigma Group bids 137,000.

10 THE COURT: All right. Is the trustee prepared to
11 try to quantify the waiver of the claim for the 1,104,000?

12 MR. MANSFORD: Not at this time.

13 THE COURT: Okay. All right.

14 MR. COSTELLO: Your Honor, XStream bids 150 cash
15 and the same terms.

16 THE COURT: Okay. All right. Mr. Nyberg?

17 MR. NYBERG: Sigma Group bids 151, 151,000.

18 THE COURT: 151,000, all right.

19 MR. COSTELLO: XStream bids 175 on the same terms,
20 on the same prior terms.

21 THE COURT: Same prior terms, thank you, Mr.
22 Costello.

23 MR. NYBERG: Sigma Group bids 176,000.

24 THE COURT: All right.

25 MR. COSTELLO: XStream bids 250,000 with the same

1 terms as its prior bid.

2 THE COURT: Two hundred and --

3 MR. COSTELLO: Fifty thousand.

4 THE COURT: Two hundred and fifty thousand.

5 MR. NYBERG: Sigma Group bids 251,000.

6 MR. COSTELLO: One moment, Your Honor.

7 (Pause.)

8 Your Honor, XStream Wireless bids 350, same
9 terms.

10 THE COURT: Okay. 350,000 plus the waiver of Mr.
11 Manapragada's claim.

12 MR. NYBERG: Sigma Group bids 351,000, Your Honor.

13 THE COURT: All right.

14 MR. COSTELLO: Your Honor, XStream remains at 350
15 plus the waiver of the claim. We've requested some
16 indication from the trustee how he would value that non-
17 cash component.

18 THE COURT: All right.

19 MR. MANSDORF: Your Honor, I do need to analyze,
20 to the extent that this would then be a case that would --
21 and it may or may not be surplus, but for the equity
22 security holders, some of that claim waiver may be going
23 right back to the same party as an equity security holder.

24 THE COURT: Well, I have Dale Kluesing at one
25 point -- but Mr. Kluesing's claim as I understand it came

1 in only at twenty-five hundred?

2 MR. COSTELLO: I think that there's another claim
3 out there. I think that there's another million dollar
4 claim, and I believe Mr. Bartlett also has a significant
5 claim.

6 THE COURT: Well, I'm looking at the schedules.
7 I've got Moeckel, Sahu, Lightfoot, and Bartlett have all
8 converted their claims to equity. Mr. Manapragada's one
9 point, one hundred and four thousand claim is being waived,
10 which is marked as disputed, and then the only creditor
11 left in Schedule F is the 1.3 by Mr. Kluesing.

12 MR. BARTLETT: Your Honor?

13 THE COURT: Sir, if you can come forward and state
14 your name.

15 MR. BARTLETT: David Bartlett and --

16 THE COURT: Good afternoon.

17 MR. BARTLETT: -- I was co-founder of the company
18 and general counsel for a while til last November. But I
19 have not -- I have equity in the company as a founder, and
20 I have a \$519,000 claim for legal work over the course of
21 the --

22 THE COURT: Well, it's been represented
23 previously, Mr. --

24 MR. BARTLETT: That was -- that's incorrect. I'm
25 telling you firsthand, I have not converted.

1 THE COURT: So what was previously represented to
2 the Court that all equity or --

3 MR. BARTLETT: I'm not sure who said that or what
4 that was about, but that is incorrect.

5 THE COURT: That was Mr. Simon who made that
6 representation.

7 MR. SIMON: Your Honor, I don't represent him. I
8 did not mean that his equity had been converted. He's not
9 my client.

10 THE COURT: We specifically went through it, and
11 you went through that and said that the amount of the claim
12 was five hundred -- that Bartlett had converted to equity.
13 So I'm just saying --

14 MR. SMITH: If I did I misspoke.

15 THE COURT: I'm not pinning any blame on anybody.
16 I'm just simply saying is that that's what was represented
17 to the Court. Mr. Bartlett is now saying that his claim of
18 519,000 has not been converted. You haven't converted any
19 of your debt.

20 MR. BARTLETT: No, Your Honor.

21 THE COURT: Have you filed a claim?

22 MR. BARTLETT: I haven't filed a Proof of Claim,
23 but I have prepared a Proof of Claim, but I'm on the
24 original schedule.

25 THE COURT: Right, at \$519,069.60.

1 MR. BARTLETT: Yes.

2 THE COURT: Okay.

3 MR. COSTELLO: And then Mr. Kluesing is on at 1.3.

4 THE COURT: Right.

5 MR. COSTELLO: Okay.

6 MR. MANSDORF: Your Honor, I think at this point,
7 given the fluidity of the claim situation, and what may be
8 a shifting back and forth by other creditors from equity to
9 debt, I don't know. I think from the estate's liability
10 perspective, I have to look at how much cash is coming into
11 the estate now and not give credit for --

12 THE COURT: A disputed claim?

13 MR. MANSDORF: -- any disputed claims at this
14 point.

15 MR. BARTLETT: Your Honor, I didn't shift my --

16 THE COURT: No, Mr. Bartlett, we're not referring
17 to you.

18 MR. BARTLETT: Okay.

19 THE COURT: We're referring to Mr. Manapragada.
20 XStream's offer was to waive his disputed claim of
21 1,104,000, which was scheduled in Schedule F, and what the
22 trustee is saying is that based on the timing and
23 everything, he is not willing to concede -- I guess at a
24 minimum, there might be some value as to claims litigation,
25 even if it's disputed. I'm suggesting that as a

1 possibility. If not and if you're still of the opinion
2 that you think it's just spurious, then I don't know how
3 you'd make that representation if you haven't looked into
4 this at this juncture.

5 MR. MANSDORF: It's premature in this case, and I
6 certainly don't want to chill the bidding process at this
7 point.

8 THE COURT: Okay. So your position right now is
9 that the Sigma offer of 351,000 -- you're looking at this
10 based on the facts as they exist right now, you can't
11 quantify that.

12 MR. MANSDORF: Correct.

13 THE COURT: All right. I just want to take two
14 minutes and I want to just -- I want to check a cite on the
15 something. I'll be right back.

16 (Whereupon, a recess is taken at 12:29 p.m., and the
17 court is reconvened at 12:32 p.m.)

18 THE COURT: Please be seated.

19 MR. COSTELLO: Your Honor, if I might --

20 THE COURT: Yeah, go ahead, Mr. Costello.

21 All right. So Mr. Mansdorf, your position is
22 that you're doing -- you're comparing the cash only offers
23 and not considering the waiver. You considered the waiver
24 of Mr. Manapragada's disputed claim in the amount of
25 \$1,104,000, but because you have no information at this

1 juncture to review any documents supporting a claim if one
2 were filed or how he came up with that matter, you're not
3 willing to speculate nor are you willing to give any
4 benefit for potentially having to -- if it is a spurious
5 claim -- litigation costs, because on the other hand,
6 under -- applying Rule 9011, if it is a spurious claim, no
7 one would want to pursue it, so your position here today,
8 if I'm correct in summarizing your position, is that you're
9 not willing to give any value to that, any dollar value
10 fixed to it.

11 MR. MANSDORF: That's correct, Your Honor.

12 THE COURT: Okay. So at this time, I have a bid
13 of 351,000 and 350,000 from XStream, Mr. Costello, so he's
14 comparing cash to cash only.

15 MR. COSTELLO: I understand.

16 THE COURT: Okay.

17 MR. COSTELLO: We have no further increase.

18 THE COURT: Okay. All right. So the final offer
19 I have is 351,000 cash from Sigma. Does anybody else wish
20 to match and overbid? Mr. Groover? Anyone? No? Okay.

21 MR. KATZ: Your Honor, could we find out how much
22 XStream has spent since they're going to be reimbursed if
23 they spent any money to maintain these patents?

24 THE COURT: I thought you previously asked for
25 that information, and they refused or failed to provide you

1 the same.

2 MR. KATZ: That is true.

3 THE COURT: All right. And the bidding, is my
4 understanding, is that there was a dollar amount of --

5 MR. COSTELLO: It was estimated that it might be
6 as high as 14,000. Your Honor, we need to get that
7 information from patent counsel, and that's ongoing. We'll
8 submit it to the trustee as soon as we have it from patent
9 counsel.

10 THE COURT: All right. Now we do have modified
11 bids from what was originally in the initial bid. It did
12 call for a waiver of that, but I'm taking --

13 MR. KATZ: If XStream was the successful bidder.

14 THE COURT: Right. But as far as giving any
15 credit for that, you have no information, and Mr. Groover
16 provided information disputing whether there was any money
17 spent by XStream or anyone else.

18 MR. GROOVER: Your Honor, I actually provided the
19 records, the official records, which show definitively that
20 as of January 9th, no patent office payments had been made.

21 THE COURT: By?

22 MR. GROOVER: Anyone, other than me and long ago,
23 Mr. Kluesing.

24 THE COURT: All right. All right, Mr. Katz?

25 MR. COSTELLO: Just a clarification, Your Honor,

1 we don't have enough information that we could provide to
2 the trustee right now so that they could evaluate it for
3 purposes of the bid, so I think our bid still is the same.

4 THE COURT: 350,000 and the waiver of the
5 Manapragada disputed claim.

6 MR. COSTELLO: Correst.

7 THE COURT: And the trustee has -- based on the
8 record, and what information he has, he's not willing to
9 give any value to a waiver of that claim. All right.
10 Anything else, Mr. Katz?

11 MR. KATZ: May I have just a minute?

12 THE COURT: Yes.

13 (Pause.)

14 MR. KATZ: The high bidder for the auction
15 purposes is Sigma Group.

16 THE COURT: At 351,000 cash.

17 MR. KATZ: At 351,000 cash. We have no
18 information from XStream about any monies it spent, so I
19 would --

20 THE COURT: For preserving the patents?

21 MR. KATZ: For preserving the patents, I'm sorry.

22 THE COURT: And the trustee did request that
23 information?

24 MR. KATZ: The trustee did request that
25 information.

1 THE COURT: When was that?

2 MR. KATZ: First at the hearing on the 9th, and
3 then in an e-mail probably around the -- I'm going to
4 speculate, around the 16th of January, because we hadn't
5 heard anything.

6 THE COURT: Right.

7 MR. KATZ: And the sale was coming up. So I would
8 suggest --

9 THE COURT: And Mr. Groover, who was the prior
10 patent counsel for Picongen has indicated that based on his
11 review, there were no payments made on behalf of XStream
12 for preserving the patents.

13 MR. KATZ: Right. So I mean at this point, it's
14 hard to take that into consideration. They should be --

15 THE COURT: Right. No, I understand. I just
16 wanted to -- for preserving the record on what they were
17 proposing what was a waiver of those fees, so what I have
18 is, right now, is that their offer is the 351,000 and the
19 waiver of the Manapragada disputed claim of 1,104,000.

20 MR. COSTELLO: Your Honor, I'm sorry, correction,
21 350.

22 THE COURT: Excuse me, 350,000.

23 MR. COSTELLO: Yes.

24 MR. KATZ: So for purposes of the auction, the
25 trustee accepts the bid of Sigma. I think that XStream

1 should have a limited amount of time, whether it's seven or
2 ten days, to provide invoices or proof of any payments they
3 made to patent agencies to maintain the patents, and if
4 they don't, then they won't be entitled to any refund of
5 that amount.

6 THE COURT: Well, I'm not going to give a
7 limitation on that. My biggest concern is for purposes of
8 what the original offer was, but they have provided you
9 with no documentation to support a waiver of that --
10 whatever they paid, if they paid anything at all, can be
11 dealt with in a claims process.

12 MR. KATZ: Okay.

13 THE COURT: My point is to deal with the offers
14 here today. Does XStream wish to make a back-up offer?

15 MR. COSTELLO: No, Your Honor. If that bid
16 doesn't go through, presumably we would go forward with the
17 conversion.

18 THE COURT: All right. Very good. Okay. Then
19 the Court will approve the auction final bidding price to
20 Sigma in the sum of 351,000 cash. All right. Anything
21 else?

22 MR. KATZ: Yes. We would like to ask the Court to
23 make a good faith finding under 363(m).

24 THE COURT: At this juncture, I'm unwilling to do
25 that because of the prior communications between Sigma and

1 XStream. I think that's going to warrant a separate
2 hearing if anybody wants to oppose that, but at this
3 juncture, I just don't have enough information, and I don't
4 think it's warranted. It's not that I won't fully consider
5 it, but because the parties had communicated, and this is
6 the first the Court has learned about any prior
7 communication between the parties, going back possibly as
8 early as December 2012, not just the January -- I believe
9 it was the January 5th date and the January 14th or 15th
10 hearing date, I think it would be appropriate to delay
11 that. Mr. Nyberg?

12 MR. NYBERG: Your Honor, if I may. We didn't
13 address the issues surrounding the good faith findings
14 earlier. I mean the testimony from Mr. Bigala was simply
15 related to a conversation about perhaps trying to, what
16 might be perceived as to chill the bidding. We have and
17 can, by either, again, by way of offer of proof or putting
18 Mr. Bigala back on the witness stand, because he is here,
19 can provide the Court with testimony as to Sigma's non-
20 relationships -- which I think actually came out in the
21 testimony -- non-relationships with XStream, no
22 relationship with Mr. Manapragada, and no relationship,
23 which you don't have yet, but with the trustee, that there
24 were no deals made between any of the -- on behalf of Sigma
25 Group, trying to buy off any bidders, and that this was

1 just an opportunity that arose and they chose to make a
2 bid, which they did, and they prosecuted that bid in good
3 faith. And I believe that the Court could easily make a
4 good faith finding. We can -- like I said, I can make a
5 formal offer of proof. I can put Mr. Bigala back on the
6 witness stand.

7 THE COURT: Mr. Katz, Mr. Mansford, do you have a
8 position on this?

9 MR. KATZ: I think that would be appropriate.

10 THE COURT: All right. Mr. Nyberg, you can go
11 ahead and call your client.

12 MR. SIMON: Your Honor, Robert Simon. As I recall
13 and Mr. Costello has the same recollection, I don't think a
14 good faith finding is in the motion.

15 MR. NYBERG: It's not in the motion, Your Honor.

16 MR. SIMON: There was no request made for a good
17 faith finding.

18 MR. KATZ: Well, that is apparently true, because
19 we didn't know there was a need to. But I would ask that
20 it be made now.

21 MR. COSTELLO: I don't think that's appropriate.

22 THE COURT: It's not set forth in the motion, or
23 there was not a request there. I'm just looking at the --
24 I'm seeing if the binding term sheet for purchase had
25 included that, which was attached to the motion.

1 MR. NYBERG: It doesn't, Your Honor.

2 THE COURT: Mr. Nyberg, it's not in the binding
3 term sheet nor is it in the motion, so it's not properly
4 before this Court. So unfortunately, I'm not in a position
5 to do that. All right?

6 MR. KATZ: I did ask for a waiver of the 14-day
7 stay, however. That is in the motion.

8 THE COURT: Right. That is, and I have no reason
9 not to grant that, but as far as the good faith finding,
10 unfortunately, I'm not in a position to rule on that.
11 Okay?

12 ALL COUNSEL: Thank you, Your Honor.

13 THE COURT: Mr. Costello, thank you for pointing
14 that out. All right. Anything else, gentlemen?

15 THE COURT: All right. That concludes the matter.

16 ALL COUNSEL: Thank you, Your Honor.

17 (Whereupon, the proceedings are concluded at 12:44
18 p.m.)
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